In the High Court of Judicature at Madras

Dated: 25/02/2003

Coram

The Honourable Mr.Justice R. Jayasimha Babu
and
The Honourable Mr. Justice N.V. Balasubramanian

O.S.A.No.64 of 1995 and O.S.A.No. 65 of 1995
and
Rev.Appln.No.35 of 1995 in O.S.A.No.158 of 1988,
L.P.A.Nos.123 and 129 of 2000, and Contempt Appeal No.11 of 2000 and C.M.Ps.

Rev.Appln.No.35 of 1995 in
O.S.A.No.150 of 1988

The Madras Stock Exchange Limited
Rep. by its Secretary
No.11, Second Line Beach
Madras - 600 001 .....Review Petitioner

-Vs-

S.S.R. Rajakumar ..... Respondent

Review Application filed under Section 114 of the Code of Civil Procedure read with Order XLVII Rule 1 of the Code of Civil Procedure praying to review the order made in O.S.A. No.158 of 1988 dated 22.02.19 94.

!For petitioner .. Mr. A.K. Sriram for
M/s. A.S. Kailasam & Associates

^For respondent .. Mr. P. Subba reddy

L.P.A.No.123/2000

1. Saji Cherian
The Executive Director
Madras Stock Exchange Ltd.,
"Exchange Building"
11, Second Line Beach
Madras - 600 001

2. S. Ramanathan ... Appellants

Vs.

1. S.S.R. Rajkumar

2. S. Ramasubramanian
President, Madras Stock Exchange Ltd.,
"Exchange Building"
11, Second Line Beach
Madras - 600 001 ...Respondents

Letters Patent Appeal filed under Clause 15 of the Letters Patent
against the order in Sub Application No.268 of 1999 in Contempt Application
No.745 of 1999 dated 14.06.2000.

For appellant .. Mr. R. Krishnamoorthy

For 1st respondent .. Mr. P. Subba reddy
2nd respondent .. Given up

L.P.A.No.129 of 2000

Mr. S. Raamasubramanian
President, Madras Stock Exchange Ltd.,
"Exchange Building"
11, Second Line Beach
Madras - 600 001 Appellant

Vs.

1. S.S.R. Rajkumar

2. Saji Cherian
The Executive Director
Madras Stock Exchange Ltd.,
"Exchange Building"
11, Second Line Beach
Madras - 600 001

3. S. Ramanathan Respondents

Letters Patent Appeal filed under Clause 15 of the Letters Patent
against the order in Sub Application No.269 of 1999 in Contempt Application
No.745 of 1999 dated 14.06.2000.

For appellant .. Mr. R. Krishnamurthy, Senior

Counsel for M/s. C. Ramesh
and K. Harishankar

For 1st respondent .. Mr. P. Subba reddy

For 2nd respondent .. Mr. A.K. Sriram for
M/s; A.S. Kailasam Associates

Contempt Appeal No. 11 of 2000

1. Saji Cherian
The Executive Director
Madras Stock Exchange Ltd.,
"Exchange Building"
11, Second Line Beach
Madras - 600 001

2. S. Ramanathan Appellants

Vs.

1. S.S.R. Rajkumar

2. S. Ramasubramanian
President,Madras Stock Exchange Ltd.,
"Exchange Building"
11, Second Line Beach
Madras - 600 001 Respondents

Contempt Appeal filed under Section 19 of Contempt of Courts Act read with Clause 15 of Letters Patent against the order made in Contempt Application No.745 of 1999 dated 14.06.2000.

For appellants .. Mr. R. Krishnamurthy, for M/s.
A.S. Kailasam Associates

For respondents .. Mr. P. Subba reddy

2nd respondent .. Given up

O.S.A.Nos.64 & 65 of 1995

Madras Stock Exchange Limited
represented by its Executive
Director, Madras - 600 001 Appellant

Vs.

S.S.R. Rajkumar Respondent

Original Side Appeals filed under Clause 15 of the Letters Patent
against the orders made in Company Applications No.1793 and 1794 of 199 3
dated 01.02.1995.

For appellant .. Mr. A.K. Sriram for
M/s. A.S.Kailasam Associates

For respondent .. Mr. P. Subba reddy

:J U D G M E N T

(Judgment of the Court was delivered by
R. Jayasimha Babu, J.)
We have before us an application to review the judgment rendered in O.S.A.No.158 of 1988, two O.S.As. filed against the orders made on two applications filed before the learned Company Judge during the pendency of the review application, two letters patent appeals filed against the orders made on sub applications in a contempt application filed by Sri. Raj Kumar alleging willful disobedience of the orders of this Court made by the learned single Judge in those two subsequent applications, and a contempt appeal.
2. After hearing arguments, we indicated to counsel for the respondent that we propose to allow the review application and directed him to address arguments on the restored Original Side Appeal No.158 of 19 88. Counsel has been heard on the merits of that appeal.
3. We will first take up the review application. The orders sought to be reviewed was made on 22nd February, 1994 and is a short order which reads thus:
"Mr. Subba Reddy has appeared for the appellant. No one has appeared for the respondent. This application is limited to the question whether any interim order should issue to continue the appellant as a Member of the defendant Stock Exchange Company. The trial Court has declined to grant the application. In the appeal, however, the appellant has preferred a miscellaneous petition, in which there has been order for a stay of the letter, under which he has been expelled thus the expulsion of the petitioner from the Membership of the respondent company has been stayed. Petitioner has, on the basis of the above continued to be a Member of the respondent company. There has been no complaint of any kind in the functioning of the appellant as a Member of the respondent Company. The Management has not found

any conduct of the appellant which in its opinion, is objectionable. We are inclined in the instant case, therefore, to dispose of the appeal in terms of the interim order dated 27.09.1988 in C.M.P.No.13215 of 1988 which has been continued under various orders and has been made final subsequently. The parties shall accordingly abide by the order above and treat the resolution of the respondent company dated 3.8.1988 as suspended. The appeal is disposed of."

4. The first thing to notice about this order is that it proceeds on the assumption that the order under appeal before it was an interim order, even though, in fact, it was not so. What had been filed before the learned Company Judge was an application purporting to be under Rule 9 of the Companies (Court) Rules, 1959 seeking a declaration that the applicant continued to be Member of the Madras Stock Exchange notwithstanding the order of expulsion which the Committee had made and which had been duly communicated, that order having been made on 03.08.1988. The learned single Judge had dismissed that application on 21.9.1988 after overruling the appli cant's contention that the Articles of Association of the Madras Stock Exchange in Article 38(c) and Article 152 in so far as it permitted the expulsion of a Member were void in as much as, according to the applicant, they were inconsistent with the provisions of the Companies Act, more particularly. Appendix `C' read with Section 25 of the Act.

5. That argument had been rejected by the learned Company Judge on the ground that it was permissible for the Stock Exchange to have such a provision and that Appendix `C' was not exhaustive. The other argument that had been advanced before the learned Company Judge was that Regulation 8(1)(f) and 9(3)(f) of the Securities Contracts (Regulation) Act, 1956 had been wrongly applied to the case of the petitioner, and that, despite the fact that the petitioner had, two years after becoming the Member of the Stock Exchange, assumed Office of the Managing Director of a public limited Company which was listed on the Stock Exchange would still be entitled to continue as a Member. That argument was found to be unacceptable.

6. The order sought to be reviewed did not deal with either of these points on which the applicant had come to Court in the first place and which by a considered order had been rejected by the learned single Judge.

7. In that order, it has been stated that the appellant before it was continuing to be a Member and was functioning as such, and that there was no complaint about his functioning as a Member. That statement was made without any material. It has been now submitted before us by his learned counsel that after the date of the expulsion, he has not functioned as a Member and has not done any trade on the Exchange.

8. The order under review, therefore, suffers from more defects than one and proceeds on certain assumptions which are patently erroneous. The errors clearly are errors which are apparent on the face of the record.

9. The review petition is, therefore, required to be and is allowed. The appeal viz., O.S.A. No.158 of 1988 is restored to file.

O.S.A. No.158 of 1988

10. In this appeal the appellant challenges the order made by the learned Company Judge on an application filed by S.S.R. Rajkumar who was aggrieved by his expulsion from the appellant Stock Exchange by a Resolution dated 03.08.1988. That resolution reads as under:

"RESOLVED to withdraw the privileges of Membership granted to Shri S.S.R. Rajkumar, Member of the Exchange, Partner of M/s. Chitra & Co., and expel him from the membership of the Exchange under Articles 38(c) and 152 of the Articles of Association of the Exchange and such other Articles of Association of the Exchange in view of his functioning as Managing Director of Central Scientific Supplies Co. Ltd., in addition to being a Member of the Exchange in contravention to provisions of Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 with immediate effect."

11. The relief sought by Rajkumar in his Company Application No.250 of 1988 was for a declaration that Article 38(c) and 152 of the Articles of the Madras Stock Exchange are against the provisions of the Companies Act and also Table `C' of the Companies Act, 1956, are void under Section 9(b) of the Companies Act, and consequently, expulsion made by the respondent by resolution dated 3.8.1988 against the petitioner is null and void.
12. Article 38, as also Article 39 of the Articles of Association are found under the heading "Termination of Membership". Article 38 provides that,
"Any member may cease to be a member
a) by resignation;
b) by death;
c) by expulsion in accordance with the provisions herein contained; and

d)by being declared a defaulter in accordance with the Rules, Byelaws and Regulations of the Exchange."
Article 152 of the Articles reads thus:
"The Council may expel or suspend and/or fine and/or censure and/or warn and/or withdraw any of the membership rights of a member if he be guilty of contravention, non-compliance, disobedience, disregard or evasion of any of the Rules, Bye-laws and Regulations of the Exchange or of any resolutions, orders, notices, directions or decisions or rulings of the Exchange or the Council or the president or the Executive Director or any Committee or Officer of the Exchange authorised in that behalf or of any conduct, proceeding or method of business which the Council in accordance with the Bye-laws and Regulations in force from time to time deems dishonourable, disgraceful or unbecoming a member of the Exchange or inconsistent with just and equitable principles of trade or detrimental to the interests, good name of the Exchange or prejudicial or subversive to its objects and purposes.
Provided that the Council, when it has found a member guilty of such conduct or acts as would entitle the Council to expel him may, at its discretion, instead of expelling, suspend him from all or any of the rights and privileges of a member for such period as the Council may deem fit or until the member has carried out or performed any lawful condition imposed by the Council in that behalf."

13. The Madras Stock Exchange Limited was incorporated as a Company Limited by guarantee on the 25th of April, 1957. The objects for which the Company was established are inter alia,
"To facilitate, assist, regulate and control the trade or business in securities;

To support and protect the character and status of brokers, jobbers and dealers and to further the interest of brokers, jobbers and dealers and of the public interest in securities;
To maintain high standards of commercial honour and integrity; to promote and inculcate honourable practices and just and equitable principles of trade and business; to discourage and suppress malpractices;
To apply for and obtain from the Government of India, recognition of the Exchange as a recognised Stock Exchange for the purpose of regulating and controlling the business of purchase, sale, dealings and transactions in securities within the meaning of the Securities Contracts (Regulation) Act, 1956;
xxxx xxxx xxxx xxxx
To regulate and fix the scale of commission and brokerage to be charged by the members of the Exchange."

14. The other objects include rendering and decisions regarding all questions of usage, custom or courtesy in the conduct of trade and business, and to encourage the settlement of disputes by arbitration.

15. Clause 9 of the Objects Clause provides that,
"Subject to the provisions of the Securities Contracts (Regulation) Act, 1956 and the Rules framed thereunder and any Law and Rules for the time being in force relating thereto, to make Rules, Bye-laws and Regulations regulating the mode and conditions in and subject to which the business on the Stock Exchange shall be transacted and the conduct of the persons transacting the same and generally for the good order and government of members of the Exchange, and from time to time, to amend or alter such Rules, Bye-laws and Regulations or any of them and to make any new amended or additional Rules, Bye-laws or Regulations for the purposes aforesaid."

16. Part V of the Objects Clause also requires to be noticed. That provides that,
"Every member of the Exchange undertakes to contribute to the assets of the Exchange in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the Exchange contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the right of the contributories among themselves, such amount as may be required, not exceeding one thousand rupees."

17. Articles of Association in Article 1(b) defines a "Member" as meaning a Member of the Exchange. Article 2 provides that the membership of the Exchange shall be limited to a maximum of 400 including corporate members. Admission of members is to be made after advertisement calling for applications from the eligible public. Article 4 provides that the membership shall constitute a personal permission from the Exchange to exercise the rights and privileges attached thereto subject to the Rules, Bye-laws and Regulations of the Exchange. Article 5 prohibits a member from assigning, mortgaging, pledging, hypothecating or charging his right of membership or any rights or privileges attached thereto and provides that anyone contravening

that Article shall be expelled by the Council. Article 6 sets out the list of persons eligible to become members of the Exchange viz., individuals, companies subject to the conditions specified therein, certain public financial institutions and their subsidiaries, as also subsidiaries of nationalised Banks set up to provide merchant banking services, buying and selling securities and other similar activities.

18. Article 7(b) requires an individual seeking membership to apply in the prescribed form. Article 8(a) provides that an applicant will not be eligible to be admitted to the Membership of the Exchange " unless he/institutions referred to herein above satisfies the requirements prescribed in that behalf under the Securities Contracts (Regulation) Act, 1956, and the Rules framed thereunder."

19. Article 23 prohibits the formation of partnerships, unless all the partners are Members of the Exchange. A non-member may not be a partner in the business carried on by the member in the Exchange. No member can be a partner in more than one such partnership firm. Article 33 provides that so long as the firm continues, all the business shall be transacted only on account of the firm and, in the event the firm ceases to exist, the erstwhile partner would be entitled to carry on business in his own name, but subject to payment of additional deposit.

20. Article 38, as already noticed, provides for termination of membership on the occurrence of any of the events referred to therein. Article 47 provides that a member's right of membership shall lapse and vest with the Exchange immediately he is declared as a defaulter. The interest and the membership of such defaulting member may be auctioned by that Article 48 to the highest bidder from among those who are eligible to become the members of the Exchange. The admission fee payable by such a successful bidder is fixed at Rs.5,00,000/- in Article 48 Sub Clause (d). A member who has been declared defaulter will be eligible to apply for membership of Exchange only after a lapse of one year from the date he was declared defaulter and only after he has paid in full all the admitted and accepted claims. The Articles also provide for the Members being represented by their authorised representatives, Clerks, constituted attorneys and remisier in the conduct of the member's business.

21. Article 105 deals with `Council'. It provides that the overall management of the affairs of the Exchange shall be vested in the Council which shall consist of fifteen persons to be elected and nominated as provided therein including the Executive Director to be appointed by the Stock Exchange. Seven of the Fifteen members are to be elected from among the members of the Exchange. Not exceeding three are to be nominated by the Securities & Exchange Board, and not less than four persons from among the public, referred to as Public Representatives shall be nominated by the Council. The Office bearers are to be elected from among the Members of the Council as provided in Article 15. The eligibility criteria are enumerated in Article 17. It provides inter alia that he should have been a Member for three to five years.

22. Article 136 provides for setting up a Settlement Guarantee Fund to facilitate and guarantee the timely and expeditious settlement and clearing of bargains and transactions entered into by the members of the Exchange and shall create and constitute a trust known as the Madras Stock Exchange Settlement Guarantee Fund Trust to administer and manage that Fund. The

Exchange is to make initial contribution of Rs.100 lakhs from the Exchange to that Guarantee Fund. Every person admitted to the membership of the Exchange is required to contribute a sum of Rs.10,000/- or higher sum as may be prescribed by the Council to that Fund. To the Fund is also to be credited the turnover/ transaction charges collected at the rate of 0.01 per cent of the aggregate turn over of sales and purchases of each member or at such other percentage of the aggregate turnover as may be prescribed by the Council from time to time. The Fund is to be utilised, inter alia to meet the shortfall and deficiencies arising out of the failure of any member to meet his commitments to the clearing house for the settlement and clearing of bargains and transactions made by the him with other members. Failure to pay contribution to the Fund can result in the expulsion of the member as provided in Sub Clause (VII) of Article 136 . 23. Article 142 provides that subject to the provisions of the Securities Contracts (Regulation) Act, 1956 and the Rules framed thereunder, the Council shall be empowered to make Rules, Bye-laws and Regulations from time to time, for any or all matters relating to the conduct of the business of the Exchange, the business and transactions of its members between members inter se as well as between its members and persons who are not members, and to control, define and regulate all such Stock Exchange transactions and without prejudice to the generality of the foregoing to make Rules, Bye-laws and Regulations for the several matters enumerated therein, which includes the prescription of things to be done in the event of suspension, expulsion or declaration as defaulter of a member.

24. Article 148 specifically provides that,
(a)No member of the Exchange shall continue as a member of the Exchange if he fails to satisfy the requirements prescribed in that behalf or infringes any requirement prescribed in that behalf by the Securities Contracts (Regulation) Act, 1956 or any Rules made thereunder.

(b)Where a member ceases to be a member under the provisions of the clause (a) hereof it shall be as if such member has been expelled by the Council and in that event the provisions relating to expulsion contained in these Articles, Rules, Bye-laws and Regulations shall apply to such member in all respects."

25. Article 152 specifically empowers the Council to expel or suspend and/or fine a member. That Article has already been set out.
26. Article 153 requires that a resolution expelling a member is not to be passed, or voted upon, unless the member has been given an opportunity to explain the charges against him. The resolution to expel or suspend must be passed by a majority of not less than two-thirds of the members of the Council present subject to a minimum of six votes, fractions to be rounded off as one.
27. The consequences of expulsion of a member are set out in Article 161. He shall forfeit to the Exchange his rights of membership and all his rights and privileges as a member of the Exchange including any right to the use of or any claim upon or any interest in any property or funds of the Exchange. A member of the Exchange shall not transact business for or with or share brokerage with the expelled member except with the previous permission of the Council.
28. Article 168 requires that the income and property of the Exchange

shall be applied solely for the promotion of its objects set forth in the Memorandum, and that no portion of the income or property shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time, are, or have been, members of the Exchange.

29. Article 174 which deals with `Winding Up' provides that in the case of winding up or dissolution or merger or amalgamation of the Exchange with any other Stock Exchange, trade or commercial body, the net surplus assets of the Exchange after meeting all liabilities and the expenses of winding up or dissolution or merger or amalgamation, shall not be paid to or distributed among the Members of the Exchange but shall be transferred or handed over to any other body or organisation or a company having objects of the Exchange or to any body constituted mainly for the benefit of the public in the advancement of knowledge, commerce, or with objects beneficial to the advancement of any other of general public utility and the promotion of industry, commerce and art.

30. Prior to the formation of registration of this Company in the year 1957, the Stock Exchange that functioned at Madras was Madras Stock Exchange Association (Private) Limited which had been registered on August 12, 1937 under the Indian Companies Act of 1913. After the coming into force of the Securities Contracts (Regulation) Act, 1956, which enactment was passed to prevent undesirable transactions in securities by regulating the business of dealing therein, by prohibiting auctions and for providing for certain other matters, the Company - Madras Stock Exchange Limited was incorporated on the 29th day of April, 1957.

31. This Company is not limited by shares and does not have any authorised share capital, and is a Company limited by Guarantee. Section 29 of the Companies Act, 1956 requires that the Articles of Association of any company, not being a company limited by shares, shall be in such one of the Forms in Tables C, D and E in Schedule I of the Act as may be applicable, or in a Form "as near thereto as circumstances admit". The proviso to that Section specifically provides that nothing in the Section shall be deemed to prevent a company from including any additional matters in its articles in so far as they are not inconsistent with the provisions contained in the Form in any of the Tables C, D and E, adopted by the company.

32. Table 'C' in Schedule I of the Companies Act, 1956 which is titled as 'Memorandum and Articles of Association of a Company Limited by Guarantee and not having a share capital" is a very skeletal table with 32 Articles none of which prohibit suspension and expulsion of a member.

33. A Stock Exchange can be formed as a Company and registered as such under the Companies Act. When so registered Stock Exchange is subject not only to the Companies Act, but more important to the regulatory framework of the Securities Contracts (Regulation) Act, 1956 which in Section 3 deals with the Stock Exchanges. A Stock Exchange before it can function as such requires the approval of the Central Government to be granted under Section 4 of that Act. Section 4 of the Act reads thus:

"Grant of recognition of stock exchanges :

(I) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf, and after obtaining such further information, if any, as it may require, --

(a) that the rules and bye-laws of a stock exchange applying for

registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors.
(b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and
(c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;

it may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.
(2) The conditions which the Central Government may prescribe under clause (a) of sub-section (1) for the grant of recognition to the stock exchange may include, among other matters, conditions relating to, --
i.the qualifications for membership of stock exchanges;
ii.the manner in which contracts shall be entered into and enforced as between members;
iii.the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and
iv. the maintenance of accounts, of members and their audit by Chartered Accountants whenever such audit is required by the Central Government."

34. Section 9 of the Act deals with the power of recognised stock exchanges to make bye-laws. Rule 9(3) provides that the bye-laws made under that Section may inter alia provide, "that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely:-
i. fine,
ii. expulsion from membership,
iii. suspension from membership for a specified period,
iv. any other penalty of a like nature not involving the payment of money.
35. Section 23 of the Act deals with Penalties. It makes it an offence to do the things which the member is permitted to do, unless he is a member.

36. The Securities Contracts (Regulation) Rules, 1957 which have been framed by the Central Government in exercise of it's powers under Section 30 of the Act in Rule 8 deals with the qualification for membership of a recognised stock exchange. It provides that,
"(1) The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that,
xxxxx xxxxx xxxx xxxxx
he is engaged as principal or employee in any business other than that of securities except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business."
35. Sub Rule (3) of Rule 8 provides that,

"No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if-
xxxx xxxx xxxx xxxx xx
(f) he engages either as principal or employee in any business other than that of securities except as a broker or agent not involving any personal financial liability, provided that --
i.the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,
ii.in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such businesses,
iii. nothing herein shall affect members of a recognised stock exchange, permitted under the proviso to clause (f) of sub-rule (1) to suspend the enforcement of the aforesaid clause, for so long as such suspension is effective, except that no member of such exchange shall engage in forward business of any kind whether in goods or commodities or otherwise and, if actually so engaged on the date of such application, he shall sever his connection with any such business within a period of three years from the date of the grant of recognition."

37. The appellant's contention is that the provision for expulsion contained in the Articles of Madras Stock Exchange are of no effect by reason of Section 9(b) of the Companies Act which, inter alia, provides that,
"(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be."
The submission is that the provisions relating to expulsion in the Articles of the Exchange contravene the provisions of the Companies Act and, therefore, of no effect. Reliance is placed by the appellant on Section 29 of the Act, which, inter alia, requires that the articles of association of a Company which is not limited by shares shall be in one of the Forms in Tables C, D and E in Schedule I as may be applicable, or in a Form near thereto as circumstances admit. The proviso to that Section clarifies that that Section is not to be regarded as preventing a Company from including any additional matters in so far as they are not inconsistent with the provisions contained in the Form.
38. We have set out elaborately the relevant provisions of the Articles of the Madras Stock Exchange and have also set out the relevant provisions of the Securities Contracts (Regulation) Act and Rules made therein to bring home the point that Stock Exchanges unlike other companies are Exchanges which are required to regulate the conduct of their members in relation to their functioning as stock brokers, that the right of persons to function as stock brokers is regulated by law primarily under the Securities Contracts (Regulation) Act, 1956, and in order that a Stock Exchange may receive recognition under the provisions of that Act, such an Exchange must necessarily incorporate in it's Rules provisions for the disciplining of it's members including their suspension and expulsion. This is very unlike other

companies, such as manufacturing, trading, financial and investment companies which are limited by shares in which the members role is limited, to investing in the capital of the companies, participating in and exercising the voting rights at general meetings, receiving dividends, and initiating legal action in certain circumstances.

39. The Stock Exchange which has the responsibility of policing the functioning of the stock brokers who, in order to function as such, must possess the qualification prescribed, and who deal with enormous sums of monies entrusted to them by their clientele, must necessarily possess power to impose penalties and to ensure that all those who desire to function as stock brokers conform at all times to the discipline required of them.

40. The position of a stock broker who is a Member of a Stock Exchange is, therefore, not strictly comparable to the position of ordinary member in a company having share capital and which share capital is utilised for the purpose of earning profits which is subsequently distributed among the members by way of dividends.

41. The Companies Act lays down a framework within which the State enables groups of persons with common object to obtain a corporate identity by their subscribing to a Memorandum in which is set out the objects for which the company has been formed, and registering the same together with the Articles of Association which are not repugnant to the provisions of the Companies Act. Section 29 of the Companies Act in it's proviso recognises the need for flexibility in the articles to be adopted by companies which are formed with different purposes, and provides that, that Act is not to be regarded as prohibiting a company to include in it's articles "additional matters" in so far as they are not inconsistent with the provisions contained in the Form in Table C, D, and E.

42. As to whether the provisions contained in the Articles of the Exchange are inconsistent with the provisions of the Companies Act has to be considered in the light of the law governing the Stock Exchanges and the provisions of the Companies Act. The enactments being statutes framed by Parliament, neither can be so read or so interpreted as to nullify what has been mandated by other. Stock exchanges registered under the provisions of the Companies Act are not to be deprived of their power to discipline their erring member stock brokers, by expelling persons who have ceased to possess the qualification prescribed under the Securities Contracts (Regulation) Act and the Rules made thereunder. By reason of the provision of the Securities Contracts (Regulation) Act, Stock Exchanges are not to be regarded as being ineligible to function as Companies under the provisions of the Companies Act.

43. As between the Companies Act and the Securities Contracts (Regulation) Act, the latter enactment is the special law in relation to stock exchanges and stock broking, while the Companies Act is the general law which deals with the formation and management of companies and various matters enacted therewith. The Companies Act is not designed to regulate stock exchanges or the profession of stock broking. That is done by the Securities Contracts (Regulation) Act and the SEBI Act. The incorporation of provisions in the Articles of Association of Stock Exchanges registered as Companies under the Companies Act which conform to the requirements of the law by which the stock exchanges and stock broking are regulated is, therefore, not to be regarded as being in any way inconsistent with what is required under the Companies Act, in the absence of provisions in the latter Act prohibiting what

is permitted or required in the former enactment.
44. The apex Court in the case of Narendra Kumar Agarwal vs. Smt. Saroj Maloo and others, (1996) 85 Comp. Cases 172, has held that provisions restricting the right of transfer of membership of a Member of Exchange is not required to be adjudicated upon in the same manner as provisions dealing with transfer of shares in a Company which has share capital is required to be adjudicated upon. The Court in that case observed,
"The High Court has also not considered who can be a member of a company limited by guarantee and of the nature and type like the MSEA (Maghadh Stock Exchange Association) and whether that would make any difference in the matter of transfer of other interest of a member in such a company."

45. Thus, what is permissible of inclusion in the Articles of Association would depend in part on the objects of the company and law which regulates that activity.
46. In case of companies limited by guarantee a provision for expulsion in the articles would not per se be inconsistent with the requirements of the Companies Act. In a club registered under the Companies Act, the privileges that accompany membership being personal to the member, the collective welfare of the Members would require that each one of them conform to a discipline which all of them agree to observe. Breaches of such discipline would require to be penalised, and if the conduct of the Member is such as to make his continued presence wholly undesirable amidst other members, there is nothing in principle that would come in the way of such a member being expelled.
47. So far as the stock exchanges are concerned, the need for such a provision is self-evident. The profession of stock broking is regulated through the agency of the Stock Exchange. Though after the enactment of Securities and Exchange Board of India Act, 1992 (Act 15 of 1992) and the framing of the Securities and Exchange Board of India (Stock Brokers, and Sub Brokers) Rules, 1992 every stock broker must be registered with Securities and Exchange Board of India, and should in addition be a member of a registered stock exchange. The exchange is to regulate the functioning of member stock brokers and ensure that they possess all the qualifications prescribed and that the conduct of their business does not at any time fall short of the high standards expected, as it is only the maintenance of such standards, that will ensure the retention of the confidence of the public in the activities of the exchange.
48. We do not see any merit in the appellant's contention that the provisions, in the Articles of this Exchange, providing for expulsion are ineffective by reason of an alleged conflict with the provisions of the Companies Act, more particularly, Section 29 and Table C in the Annexure to the Act.
49. Having regard to the prayer made in the company application, this should be the end of the matter. However, since counsel had addressed us with regard to the interpretation of Section 8(1)(f) and 8(3)(f) of Securities Contracts (Regulations) Rules, 1957 as well, we shall deal with the same in order that that controversy may not be raised once again.
50. We have already set out Rule 8(3)(f) of Securities Contracts (Regulation) Rules. That Rule cannot be said to have been very well drafted. However, that by itself is no reason for not giving effect to it. Effect must

be given after ascertaining the real purpose and intendment of the Rule. That Rule is in two parts. The first part prohibits the Member of the Exchange from being the principal or employee of any business other than that of securities. The second part permits his functioning as a broker or agent in a business other than securities, provided he does not incur any personal financial liability by functioning as such broker or agent.

51. Shortly after the Madras Stock Exchange was registered, the Government of India on the 9th January, 1961 addressed a letter to all the Stock Exchanges, with regard to the query by one of the stock exchanges as to whether a member of the stock exchange can be permitted to become a director or; Managing Director of a company, wherein it was, inter alia, stated thus:

"It would not be permissible for him to become a managing director thereof or to be a partner in a managing agency or firm carrying on ay other business. We are bringing this interpretation to the notice of the other Stock Exchanges and would like your Stock Exchange also to act on the basis of this interpretation."

52. The petitioner knew about the effect of this Rule and had undertaken to abide by the same when he applied for Membership of the Exchange and answered the questionnaire which he was required to. That questionnaire inter alia required the applicant to answer the following questions:

"Are you engaged as principal or employee in any business other than that of securities? If so, please give full particulars.

Are you aware that on admission to membership of the Stock Exchange you will have to cease forthwith to be so engaged?"

53. The applicant had answered this query and had given the answer as "Yes". He was admitted to the Membership of the Exchange in the year 1985. Two years thereafter, the Company by name Central Scientific Supplies Company Ltd., wrote to the Exchange informing the Exchange that Raj Kumar has been appointed as it's Managing Director. The Exchange asked for his explanation after informing him that he cannot be Managing Director of another business while being a Member of the Exchange and warned him that he will lose his membership, if he does not give up his that position. The Stock Excha nge gave him opportunities on two occasions to state his case before the Council, and on his refusing to give up his Managing Directorship of Central Scientific Suppliers Co. Ltd., it was left with no option but to expel him, which was done on 12.08.1988.

54. The applicant before the Company Court, therefore, had no cause for complaint at all after having accepted admission on the conditions set out in the Articles and the Rules, the effect of which was made known to him in the form of various queries which was answered by him. He sought to ride two horses by becoming the Managing Director of a Company unconnected with securities business, even while seeking to function as a stock broker. That was clearly impermissible. He had thus incurred a disqualification contemplated in Rule 8(3)(f) of the Securities Contracts (Regulation) Rules. Article 148 of the Exchange specifically provide that a Member cannot continue as a Member of the Exchange if he fails to satisfy the requirements prescribed in that behalf or infringes any of those requirements so prescribed under the Securities Contracts (Regulation) Act 1956 and the Rules made thereunder.

55. Thus, the applicant invited his own expulsion and had nothing to complain about.

56. Learned single Judge, in our view, was right in dismissing the

application of the applicant. We see no merit in this appeal. The OSA.No.158 of 1988 is dismissed.

O.S.As. No.64 and 65 of 1995

57. These two appeals arise from the orders made by the learned single Judge on applications filed by the same applicant before the Company Judge at a time when the application for review of the order made in O.S.A. No.158 of 1988 was pending. The learned Company Judge had allowed those applications placing reliance on the order which had been made by the Bench on the 22nd February, 1994 which had held that the applicant was still a Member. That order of the Bench has been reviewed by us, and no longer survives. The substantive appeal after further hearing having been allowed and the application filed by Rajkumar in Company Application No.250 of 1988 having been dismissed, his expulsion with effect from 12.08.1988 remains effective. No question of allowing the expelled member to function as a stock broker could possibly arise. The impugned order of the learned Company Judge directing the Exchange to permit him to function as a Member and to trade under a new name, was clearly not a relief to which the applicant was entitled. The impugned judgment is set aside and the applications filed before the learned Company Judge in Company Applications No.1793 and 1794 of 1993 are dismissed.

L.P.As.No.123 and 129 of 2000 & Contempt Appeal No.11 of 2000

58. The contempt appeal is against the order of the learned single Judge holding that the three respondents in the contempt petition No.745 of 1999 are guilty of contempt and directing each one of them to pay Rs.10,00,000/- to the applicant. The contempt alleged is the disobedience of the order made by the learned single Judge on 01.02.19 95 on Company Applications No.1793 and 1794 of 1993. That order is the subject matter of O.S.As. No.64 and 65 of 1995 which appeals have now been allowed by us, as a consequence of which those applications have been dismissed.

59. The two sub applications No.268 and 269 of 1999 made in that contempt application, sought payment of Rs.75.00 lakhs as compensation and a direction to the exchange to furnish particulars regarding the sale of the membership ticket in earlier years. Letters Patent Appeals No.123 and 129 of 2000 are directed against the order made on those two sub applications. The order directing payment of any compensation to the applicant is clearly unsustainable. The applicant had been expelled in the year 1988 after he had consciously incurred a disqualification which he stubbornly refused to overcome despite the opportunities given. No question of compensation to a person who was not entitled to remain a member can possibly arise.

60. The very first company application No.250 of 1988 filed by the applicant was dismissed by the learned single Judge on 21.09.1988. In the appeal filed against that order there was an interim order on 2 8.09.1988 staying the order of the company Judge. The applicant, however did not, on the strength of that interim order take part in the activity of the exchange as a broker. At that point of time he was a partner in Chitra & Co., in which the senior partner was one Narayanaswamy. Trading in the exchange could be done only through the partnership firm and not by the applicant as an individual so long as he remained a partner of the firm. That firm continued

to trade and was not at any time prevented from trading. It is on account of inter se dispute between the partners that the applicant did not trade in the name of the firm. The exchange cannot be held responsible for that.

61. In the year 1990 the other partner Narayanaswamy died and under the Rules of the exchange a member who was a partner may function as a member on his own after clearing the outstanding of the firm of which he had been a partner. That firm had outstanding of Rs.1,45,240 /- which the applicant did not discharge. The applicant had been intimated in November, 1990 about the need for such discharge under the relevant Article (Article 33) of the Articles of Association. The exchange again reiterated that position by a resolution on 14.03.1992 . Even thereafter, the applicant made no effort to discharge that outstanding, and under the cover of the interim order trade as a member. For this conduct of the applicant, the exchange is by no means responsible.

62. The applicant by his applications filed in the year 1992 merely sought a declaration which was identical in terms to that which had been sought in Company Application No.250 of 1988. Those applications seem to have been abandoned as nothing has been stated as to what happened to those applications. A year later, he filed Company Applications No.1793 and 1794 of 1993 seeking a direction that he be permitted to carry on trade by himself with a new name "Dhanalakshmi Company", and for other directions. That prayer was made without complying with the requirements of Article 33 and without discharging the liabilities of the firm. The applicant was not entitled to the permission so sought. Despite that, the learned single Judge granted such permission which we have now set aside.

63. The exchange cannot be faulted for observing it's Articles scrupulously. The exchange is not required to jeoparadise it's own position as a recognised exchange by permitting trade in the exchange by persons who are not qualified to carry on such trade. Securities and Exchange Board of India Act, 1992 (Act 15 of 1992) by Section 12 requires that Stock broking be done only by those duly registered under the Act. The applicant did not at any time register himself under the Act. No application was made for that purpose either directly or through exchange. The applicant was not entitled to trade in the exchange without such registration. Under Rule 4(a) of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Rules 1992 only persons who are members of the exchange are entitled to be registered with SEBI. Membership of the exchange alone is insufficient. Registration is mandatory after that Act came into force. Applicant could not have traded even if he were to be regarded as a member without registration with SEBI. On this ground also applicant cannot complain that his right to trade was in any way interfered with.

64. The applicant after his expulsion had no interest of any kind in the membership of the exchange. There was no question of his membership ticket being available to him for sale. As has been held by the apex Court in the case of Vinay Bupna vs Stock Exchange, Mumbai, AIR 1999 SC 2517 -- "It will be incorrect to state that on the stockbroker ceasing to be a member, he still retains any right or interest in the permission which has been granted to him by the Exchange to carry on business as a member. The membership card of a sharebroker is not his personal property which, on default being committed by him and his ceasing to be a member, can be sold and the proceeds distributed amongst his creditors."

65. The apex Court reiterated what had been said by the Privy Council in the case of Official Assignee of Bombay v. K.R.P. Shroff, AIR 1932 PC 186 wherein it had been observed, "..... in the case of a member who has lost his membership for being a defaulter clearly enough is that he loses all interest both in the property of the Association and in his card. In such a case no interest is reserved in the defaulter's card except to members of the Association who have suffered by his lapse - in the rules sometimes called his creditors - or to the Association itself. "
66. The learned single Judge was clearly in error in holding the respondents in the contempt application, guilty of contempt. The direction to the respondents therein to pay a sum of Rs.30.00 lakhs to the applicant was wholly uncalled for and was beyond the scope of the contempt application. The officers of the exchange are not to be penalised for having followed the Articles of the exchange which Articles are perfectly valid. It is not the province of the Court to compel anyone to act against the law and to penalise such a person further for not having acted against the law.

67. The Letters Patent Appeals as also the Contempt Appeal are allowed. The contempt application as also the sub applications therein shall stand dismissed. The pending CMPs are closed.

(R.J.B.,J.) (N.V.B.,J.)
25.02.2003
Index : Yes

Website: Yes

btr/mf

□